

***United States Court of Appeals
for the Second Circuit***



TRANSCRIPT

APPEAL
75-6068

PETITION
75-4164

United States Court of Appeals

FOR THE SECOND CIRCUIT

SUN ENTERPRISES, LTD., SOUTHERN NEW YORK FISH AND GAME
ASSOCIATION, INC., LYMAN E. KIPP, RICHARD E. HOMAN, NO
BOTTOM MARSH and BROWN BROOK,

Plaintiffs-Appellants,

—against—

RUSSELL E. TRAIN, *et al.*

["Federal Defendants"], *Defendants-Appellees, and*

HERITAGE HILLS OF WESTCHESTER, *et al.*

["Private Defendants"],

Intervenors.

SUN ENTERPRISES, LTD., SOUTHERN NEW YORK FISH AND GAME
ASSOCIATION, INC., LYMAN E. KIPP, RICHARD E. HOMAN, NO
BOTTOM MARSH and BROWN BROOK,

Petitioners,

—against—

ADMINISTRATOR OF THE U. S. ENVIRONMENTAL
PROTECTION AGENCY, RUSSELL E. TRAIN,

Respondent, and

HERITAGE HILLS OF WESTCHESTER, *et al.*

Intervenors.

Appeal from the U. S. District Court for the Southern
District of New York

Petition to Review Order of U. S. Environmental
Protection Agency

TRANSCRIPT OF DEC Hearing, Volume 7 of 9

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THE STENOGRAPHIC RECORD

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter

of

the Application of HENRY PAPARAZZO and
CURTIS McGANN (HERITAGE HILLS) for the
acquisition of a source of water supply,
etc.

Water Supply Application No. 6284

October 5th, 1973
Town of Somers, New York

PAULINE E. WILLIMAN
THOMAS P. FOLEY
CERTIFIED SHORTHAND REPORTERS
41 STATE STREET
ALBANY, N. Y.

of

the Application of HENRY PAPARAZZO and CURTIS McGANN (HERITAGE HILLS) for the acquisition of a source of water supply by the development of wells to ultimately supply 1.2 million gallons per day and the construction of a water supply and distribution system to provide service to a planned residential community consisting of approximately 3,000 living units known as Heritage Hills of Westchester County, for the construction of a dam approximately 20 feet high to create a pond having an area of approximately 1.6 acres on an unnamed tributary, known locally as Brown Brook, of the New Croton (Muscoot) Reservoir which is designated H-31-P-44-18 and which has been classified C(T), for the construction of a sewage effluent discharge structure, and for relocation of approximately 650 feet of the so-called Brown Brook to build a sewage treatment facility.

Water Supply Application No. 6284

TRANSCRIPT OF CONTINUED PROCEEDINGS

in the above-entitled matter at a hearing held by the New York State Department of Environmental Conservation, at the Town Hall, Town of Somers, Westchester County, New York, on Friday, October 5th, 1973, commencing at 10:30 o'clock A. M.

PRESIDING: WILLIAM J. DICKERSON, JR.,
Hearing Officer.

APPEARANCES: (As heretofore noted.)

P R O C E E D I N G S

MR. DICKERSON: Ladies and gentlemen, this as I think everybody is aware, is a continuation of the hearing before the Department of Environmental Conservation in the matter of the application of Henry Paparazzo and Curtis McGann under Water Supply Application No. 6284 and related applications, for the water supply, the construction of a dam, the relocation of a classified stream and the construction of a sewage effluent discharge structure to service the project generally known as Heritage Hills of Westchester.

At the time we closed last night, we had two requests, motions if you will, made to the Hearing Officer and the first being that the hearing be adjourned, a new notice published and the hearing continue in an expanded fashion to consider the effects of Chapter 801 of the Laws of 1973, otherwise known as SPDES. This request is denied.

I can make no statement as to the second request and, in effect, a guarantee that there would be a hearing under SPDES. The law became effective September 1st, but the -- I used the words "enabling rules and regulations" yesterday, that's

not quite proper -- perhaps the operative rules and regulations with which this law would be administered have not been promulgated yet. It is my personal understanding that they are at best in draft form at this time. The applicant has stipulated that he would have to make an application or acknowledge -- let me say acknowledge that he would have to make an application for the SPDES permit, the discharge permit.

A casual reading of the SPDES law indicates that a hearing may be held and that's as far as I can take it. I can no way guarantee that a hearing will be held or will not be held nor would I even guess as to whether there would be a probability of such event. This is something that is still to be done in the future when the rules are published, the applications are made, the legal notices required in the law are published and then a decision would be made at that time.

I think the members of the bar here are aware of the problem due to the effective date of the SPDES law as of September 1st, 1973, which occurred after the notice for these proceedings had been published.

And with that statement, we're going to continue with this hearing and hear the issues before us; that is, the water supply, construction of the dam, the relocation of a classified stream. The tacit purpose of this is to build a sewage treatment plant but the issue is the relocation of the stream for that purpose, ^{divert} but the relocating of a classified stream and the disturbance of the bed and banks of the classified stream for the construction of the sewage effluent discharge structure.

MR. BLASI: Mr. Dickerson, may I make a statement for the record please if you are finished, but don't let me interrupt you.

MR. DICKERSON: I've got a couple housekeeping chores but --

MR. BLASI: All right, whenever you're ready, sir.

MR. DICKERSON: They are more in line with continuing with the hearing for various parties. So Mr. Blasi?

MR. BLASI: It's a very brief statement, sir.

In reference to the statement which

the Examiner has just made, the applicant wishes to note for the record that the application under Chapter 801 of the Laws of 1973 referred to as SPDES is --

MR. DICKERSON: Politely referred to as SPDES.

MR. BLASI: Yes, sir. -- is being or is in the process of preparation and filing with the appropriate agency.

(Continued on page 1185)

MR. DICKERSON: Thank you.

Now, to get started on the case of the various objectors, Mrs. Port, will your husband be here this morning?

MRS. PORT: No, my husband was unable to be here this morning. We have two families who prepared a statement that we would like to give you without this being our final word because we did not know what form it would take.

MR. DICKERSON: Your statement will not terminate your part in these proceedings. Before we get to that, I have a statement from Mrs. Eustace, sent by herself and her husband which she wanted to submit. I think the simplest thing to do would be to read it into the record in the same fashion as an unsworn statement presented before the group, it having such status. I'll read it verbatim.

The address indicates Somers Road, Somers, New York, October 5th, 1973, addressed to the New York State Department of Environmental Conservation, Albany, New York.

"Dear Mr. Dickerson:

"Since we can not be at the hearings being conducted at the Somers Townhouse regarding the water supply and sewage treatment facilities of the Heritage Hills Development of Somers we would like to state in writing for the record our opposition to certain aspects of the project, and also emphasize some questions that we feel are important for the DEC to consider.

"First of all we would like to state that we are not against the Heritage Hills project in principle. The concept of cluster housing and planned land development are valuable tools for preventing suburban sprawl. However, we do object to aspects of the Heritage Hills project as planned, and as already carried out.

"At the beginning of the hearings representatives of the Heritage Hills development --" it's written here 'HH' -- "claimed to be concerned with the environment surrounding their development, but from what we, as permanent residents of the town, have personally observed the developers are more concerned with building golf courses and

buildings than with the ecology of the area. Primarily due to the golf course construction on Warren Street the Brown Brook has been seriously altered. The waters of the Brook are down and the water is reddish-brown in color. As a result the Saia/Port pond on the corner of Warren Street and Route 202 has also been seriously spoiled. We have lived next door to the pond for two years and therefore can verify that it used to be a clear pond with bubbling clear water flowing in and out of it. Now it is a sluggish brown and the stream (Brown Brook) feeding it greatly reduced. In addition, after a rainfall the pond looks like the red river and so thick with soil deposits that one feels that it could be walked on without too much trouble! Despite repeated complaints the HH developers have not alleviated this condition although they claimed they were trying to prevent soil from entering the brook. Is this a sign of things to come? We hope not, but fear so.

"Next, we would like to question the location of the Sewage Treatment Plant as proposed by the developers. With the hundreds of acres owned by the developers why did they have to place it at the very edge of their property in the close proximity of established residences? This plant is bound to devalue our property and make resale of our homes difficult. However, more important than devaluation is the deterioration of our neighborhood. The engineers who represent HH have not shown sufficient evidence that the plant will not pollute the environment both in terms of water pollution and smell pollution. Even though Mr. McPhee claimed smell is in the nose of the beholder, we do not want to have to judge how much the HH sewage plant smells; we do not want to smell it at all. Also why are the developers choosing to divert a pre-existing stream when there are so many acres to choose from? Have they done long range studies to see potential problems of such a diversion? From testimony given at the hearings it would appear not.

Furthermore the construction of a dam at Brown

Brook is a potential danger to our neighborhood. Careful study should be given by your department to insure that this dam does not injure the ecological balance of the area or life or property.

"Although the HH project is supposedly based on the concept of total land planning, in regard to water supply the developers seem to be planning piecemeal. They are drilling a few wells now in the hopes that they will have additional water supplies later. But what if their additional water supplies do not materialize? Will they try to overwork the wells they have and thus endanger the water supply of the other residents of the area. At the hearing Mr. McGann said that the corporation would compensate any property owner whose well went dry due to the HH wells. However we find little reassurance in this statement. First of all we feel that if proper planning is done by the developers and investigation by the environmental commission the development of the land should be done only in proportion to the resources that are available, not on the basis of hoped for resources. Furthermore, if the developers are granted permission to drill

their wells, will the DEC help us to get some more definite guarantee that our water will be secure and that in the event that our wells do go dry we will not have to spend a fortune in legal fees fighting HH before they make good on their promise to guarantee our water supply.

"Finally, we are deeply concerned by the lack of concern for the established residents of Somers and the town of Somers as a whole demonstrated by the Heritage Hills Developers. At the hearings they openly stated that they were unfamiliar with the rest of the town outside of their acreage. However a development as large as Heritage Hills which will double the population of the town should be planned with the whole town in mind. The people of Somers would like to view Heritage Hills as a neighbor rather than an intruder but it is becoming increasingly difficult to do so. We hope that your department will be able to set up guidelines for the developers which will be of benefit to the whole Somers Northern Westchester area, not just the pocketbooks of a

few influential land developers.

"Yours truly,

"Cecilia O. Eustace

"Thomas D. Eustace."

(Continued on page 1191)

MR. DICKERSON: As I indicated, this has the status of an unsworn statement and will be considered as such during review of the application.

Mrs. Port and Mrs. Saia, do you have a statement?

MRS. PORT: Would you like to read it?

MR. DICKERSON: I think it would be fair and reasonable. I thought you were going to read it.

MRS. PORT: I'd rather you do.

MR. DICKERSON: Oh, dear.

MR. BLASI: You read very well, Mr. Examiner.

MR. DICKERSON: Thank you. I'll just read the written statement handed in. It will have the same status.

"The following thoughts constitute our position in the above-mentioned matter following attendance at each session during the several days of this hearing:

"1. With respect to the source of

water supply (1.2 million gallons per day) we tend to feel from the expert testimony given that our earlier fears with respect to our particular wells have been somewhat relieved. We do note, however, that two experts have testified as to the possibility that some residents in the Deans Bridge and Lake Purdys areas could be in danger of losing their source of water. We would hope that the rights of these affected residents of the town of Somers would be protected.

"2. With respect to the proposed dam, we feel that it is essential that the Department of Environmental Conservation stipulate that the water stored in the dam not be siphoned off sometime in the future (for instance, for irrigation of the golf course or, in other words, non-emergency type situations) in such a way as to interfere with the intermittent nature of the Brown Brook. As an example of our concern, if the developer used a sufficient amount of this stored water with a resultant drop in the level of the water, each time he did this there would be, of necessity, times when the brook would not flow

until the water level was re-established.

"3. Of considerable concern to us is the possible continuation and, indeed, increase in the siltation (mud, colloidal matter or whatever) caused by construction upstream coming into our pond. We are prepared to submit photographs of the pond taken both before and after construction was begun by Heritage Hills, if these are admissible. It has been alleged during the course of this hearing that the material coming into the pond has flowed out of the pond after a few days, thus clearing the water in the pond, and causing no damage. We wish to state from our own observation that in the past few months the pond has been muddy at times and murky at other times, but never clear. Previously, both families have been able to observe life (fish, snakes, etc.) at the bottom of this pond. Presently, we can no longer see the bottom nor can we see any sign of life in this pond, which is a great disappointment to us and especially to our children who have had much enjoyment from this pond in the past. We feel that damage has already been done and could increase.

Remedial action should be required and further preventative requirements stipulated.

"4. Although we realize that the location of the sewage treatment plant is not included in this hearing, we feel that, proportionally speaking, the greatest financial damage will be done to us and our neighbors by the erection of this plan in such close proximity to our homes with a resultant decrease in our property values. We therefore ask that this subject be made a part of the record or that a subsequent public hearing be held on this issue since the Department of Environmental Conservation must also consider in the words of its Public Notice of August 16, 1973 '...whether they make fair and equitable provisions for the determination and payment of any and all legal damages to persons and property, both direct and indirect, which will result from the execution of the plans...'

"In conclusion, we ask that the Department of Environmental Conservation notify us of all findings resulting from this hearing.

"Respectfully submitted,

"George E. Port, Jr.
"Ann Port
"1 Warren Street
"Somers, New York 10589

"Anthony Saia
"Rosemary Saia
"Route 202
"Somers, New York 10589

"Owners jointly of Saia-Port Pond
located on westerly corner of
Warren Street and Route 202."

MR. DICKERSON: Is this a duplicate?

MRS. PORT: Those are the photographs, if they are admissible.

MR. FLORENCE: I could ask her questions to make them admissible, if you want.

MR. DICKERSON: I could do it and I probably would since they are not represented by counsel.

MR. BLASI: Mr. Examiner, as far as the applicant is concerned, there is no objection to the photographs. I haven't even seen them.

MRS. PORT: Mr. DeGrace has.

MR. BLASI: We had no conversation.

MR. DICKERSON: There is no objection. We'll mark them. The envelope containing

15 photographs, collectively marked as Exhibit 40.

(15 photographs described above, were marked for identification collectively as Exhibit No. 40, this date.)

MR. FLORENCE: May I look at them?

MR. DICKERSON: In a minute. Off the record.

(Discussion off the record.)

MR. DICKERSON: For the record, Exhibit No. 40 consists of an envelope, or consists of 15 individual photographs of the Port-Saia Pond. The alleged dates are indicated on the back of the photographs.

Let's go off the record.

(Discussion off the record.)

MR. DICKERSON: Exhibit 40 is received for what it's worth.

Is New York City present today to say anything?

(No response.)

MR. DICKERSON: Mrs. Bahret, Mr. Mally, Mrs. Daly?

Does Westchester County have

anything general, Water Agency, Planning Department, et cetera?

MR. ALEXANDER: Nothing.

MR. DICKERSON: Mrs. Rauch, Mrs. Nardelli, Mrs. Goldman, Robertin? Let's see if Mrs. Daly has anything to say in a minute. Mrs. Daly, we had your statement yesterday. I'm sorry. Mr. Florence, do you wish to begin?

MR. FLORENCE: Yes.

MR. DICKERSON: Off the record.

(Discussion off the record.)

MR. DICKERSON: Let's go back on the record. Mr. Florence?

MR. FLORENCE: I offer certified copies of the Civil Docket, Town of Somers, pages 273, 274 and 279.

MR. BLASI: I think you should have whatever you are offering marked for identification first.

MR. DICKERSON: I think at this time we'll take the word offering in its looser sense. I'll mark these three pages for identification as Exhibits 41, 42, 43.

(Civil Docket, Town of Somers, pages 273, 274 and 279, marked for identification as Exhibit Nos. 41, 42 and 43 respectively, this date.)

MR. DICKERSON: For identification, Exhibit No. 41 is page 273, Civil Docket, subtitled, "Compromise of Civil Penalty," certified by the Court Clerk.

Exhibit No. 42 for identification is page 274, Civil Docket, "Compromise of Civil Penalty," certified by the Court Clerk.

Exhibit No. 43 is page 279, Civil Docket, "Compromise of Civil Penalty."

Off the record.

(Discussion off the record.)

(Continued on page 1199)

MR. DICKERSON: O.K. Ladies and gentlemen, we're back on the record. We've marked three exhibits for identification. Mr. Florence?

MR. FLORENCE: I offer them.

MR. DICKERSON: Would you say that a little louder, please?

MR. FLORENCE: I offer them.

MR. DICKERSON: This is a public hearing.

O.K. Mr. Blasi or Mr. Vazzana, whoever wishes to go first?

MR. BLASI: First of all, I address myself to Exhibit No. 41 for identification, taking them seriatim.

This appears to be a compromise of a civil claim or civil penalty. I object to its introduction on the ground that it is against the individual named. It is irrelevant, incompetent, immaterial. It has absolutely no bearing on this application, can be nothing other than an isolated act which has no reference to the application for a water supply whatsoever. I don't understand the

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purpose of it other than perhaps to try inferentially to injure this applicant in the eyes of you, Mr. Hearing Examiner, and in an attempt to make a criminal out of one Leonard J. Meczulski, whereas it's a compromise purely of a civil penalty and, therefore, as to Exhibit 41 I object to its introduction in evidence.

MR. DICKERSON: All right, Mr. Vazzana, any comment?

MR. VAZZANA: I don't join in the admission or the objection.

MR. FLORENCE: May I be heard?

MR. DICKERSON: Please.

MR. FLORENCE: This is a violation of Section 15-0501-1(a) of the Environmental Conservation Law. It's made by a Conservation Officer, in which the people of the State of New York complain of the named defendant for violating essentially the stream regulations and --

MR. BLASI: Why don't you --

MR. FLORENCE: -- the purpose of --

MR. BLASI: Excuse me, I don't mean to interrupt you, but let's be specific about that.

3/1/3

1201

He happened to cross the stream with a piece of motorized equipment according to this exhibit. Let's state specifically.

MR. FLORENCE: I think the exhibit will stand on its own.

MR. BLASI: Very good, sir, but if you enlarge upon it, then I must call your attention to the exhibit and, of course, Mr. Kurka is ill and he's not here so I offer them directly as certified copies kept by the Town of Somers of this Mr. -- however you pronounce his name, of Woodbury, Connecticut.

MR. FLORENCE: It's offered really on two bases: First of all, to give substance to the claim of the parties who have already said that there is damage to the stream which has been somewhat denied, and, to the extent that it has been denied, therefore, impeaches the credibility of the denial and, secondly, as evidence of the violation of the stream regulation and as some evidence that the State must, in its decision, take into account past conduct as well as future conduct in setting whatever regulations and whatever requirements that it may

in its judgment find to be appropriate under these particular circumstances.

MR. BLASI: Are you through?

MR. VAZZANA: May I just say one thing?

MR. DICKERSON: Speak a little louder.

MR. VAZZANA: Yes. The civil compromise insofar as that is concerned is purely a civil compromise as we all understand it. It's not a criminal action. I merely bring that out.

MR. FLORENCE: I understand.

MR. VAZZANA: Solely that we have the record complete.

MR. DICKERSON: Mr. Blasi, I think I know what your further objection is going to be. Mr. Florence, as it stands at this moment, I would have to sustain the objection unless you lay further groundwork to show the relevancy of this document or these documents to the applicant.

MR. FLORENCE: May I ask two questions in that respect?

MR. DICKERSON: Before you do, I'm going to cut through the procedure slightly and ask is it your implied contention that these gentlemen

in the mention of the various documents are employees of the applicant?

MR. FLORENCE: They are either subcontractors or employees working on the project and the land of the applicant, and, frankly --

MR. DICKERSON: O.K. I'm going to sustain the objection until you establish what their relationships are with the applicant.

MR. FLORENCE: My objection hasn't anything to do with that. My objection deals with -- that is, my submission deals with the violation of the stream itself on the applicant's parcel. Anybody wants to deny that these are violations of the applicant on the applicant's parcel I'll then bring in the Conservation Officer.

MR. DICKERSON: If you want to produce them for that limited purpose, but you realize the relevancy in that case.

MR. BLASI: I would like just to add one additional observation. Mr. Florence being a very competent negligent lawyer --

MR. FLORENCE: Don't put a "T" on the end of it.

MR. BLASI: -- has jumped a big wide gap in which he now is trying to create a damage case before the Department of Environmental Conservation. If he has any damages outside of whatever is claimed in there --

MR. FLORENCE: I don't have any interest so I can't have damages.

MR. BLASI: You're trying to imply that there was damage done.

MR. DICKERSON: O.K.

MR. FLORENCE: No, not -- I don't think I am implying anything.

MR. BLASI: You stated that. You stated that, that you were offering it as evidence of damage.

MR. FLORENCE: Damage to the edge, not money damages, damage to the edge of the stream.

MR. BLASI: You are implying the question "damage" and when you use "damage" you are using it in the legal sense.

MR. FLORENCE: The legal sense is damage to the stream, not money damage.

MR. BLASI: Then you are -- then you

are conceding that there was no legal damages as such.

MR. DICKERSON: O.K., gentlemen.

MR. FLORENCE: I'm not conceding anything. It's irrelevant.

MR. DICKERSON: You, Mr. Florence, trying to sort through this, based on your later remark when you commented on the objection to receiving it in evidence, you say you submit this just to show that the stream has been violated --

MR. FLORENCE: That's correct.

MR. DICKERSON: -- if I may use that terminology.

MR. FLORENCE: Right, by people from -- in this particular case by a man from Woodbury, Connecticut and on page 271 by Lauman who has testified he was under subcontract with the applicant.

MR. BLASI: I don't think these documents are evidence of anything, Mr. Commissioner.

MR. FLORENCE: And by a third person --

MR. BLASI: Other than the fact that somebody --

MR. FLORENCE: -- from Southbury,
Connecticut.

MR. BLASI: -- somebody had a claim
made against them and Mr. Kurka, who is a very
fine, gentle soul running around through the bushes
looking for violations of the Conservation Law,
sat down with him and said, "Let's get rid of this
matter. How much do you think it's worth?" "Here,"
you write a check and go home. He's trying to
create --

MR. DICKERSON: O.K., gentlemen.

MR. BLASI: He's trying to create
a picture here of some heinous crime on behalf of
this developer.

MR. FLORENCE: That's not --

MR. DICKERSON: Mr. Blasi, have you
read these documents?

MR. BLASI: Yes, sir, I have, and
I object to all of them.

MR. DICKERSON: Did you read them
literally?

MR. BLASI: Yes, sir, I did.

MR. DICKERSON: In that case I think

you are aware of their contents, as I am, having read them.

Mr. Florence, you wish to offer all three of them into evidence?

MR. FLORENCE: Yes.

MR. DICKERSON: I'm going to receive all of these -- all three of these documents into evidence and I wish to emphasize for exactly what they're worth.

MR. BLASI: Which is zero, Mr. Examiner. May I add that comment into the record. I think they are vicious, they are unnecessary, they are impertinent, they are scandalous, they are scurrilous and they absolutely do not belong in a water application.

MR. DICKERSON: Mr. Blasi, I --

MR. BLASI: I say that to you respectfully because I respect you personally.

MR. DICKERSON: I did not use these words lightly and I said emphasizing for what they're worth as they stand. If you want to put --

MR. BLASI: You want to put in a couple of speeding tickets, too? I mean, go get a couple

of speeding tickets.

MR. DICKERSON: Gentlemen, I don't want to take another break.

MR. VAZZANA: I think we're getting beyond the point.

MR. DICKERSON: Let's get on with the rest of the hearing or I'll take another break until this afternoon.

MR. FLORENCE: I haven't any more documents.

MR. DICKERSON: O.K. Let's go off the record.

(Discussion off the record.)

(Continued on page 1209)

MR. DICKERSON: Let's go back on the record. We're going to go back on the record. Mr. Florence is going to continue.

MR. FLORENCE: I will continue on Tuesday morning when my expert will be present.

MR. DICKERSON: Is that a request for an adjournment?

MR. FLORENCE: Yes, it is.

MR. BLASI: I oppose it. I know what you are going to rule, Mr. Examiner, but I oppose it for the reason that Mr. Florence has no right to assume your ruling one way or the other and he should have had his experts here today, and this is at our expense.

MR. DICKERSON: Mr. Florence, do you have any material or any opening statement or anything that we can get further down the road?

MR. FLORENCE: I've already made my opening statement. My expert is in Washington, D.C. I just physically can't have him.

MR. BLASI: If you were in court you would have had to have an affidavit of the fact that he was in Washington and you knew yesterday

that he should not have gone to Washington. He should have been available here today. I'm making this statement because I know what the Examiner's position is, but I make it as an emphasis that come Tuesday morning we're going to go ahead with these hearings and we are not going to brook any more delay, Mr. Examiner. You've been most patient and I think that everybody has been very considerate with everybody, but I don't think that's the proper thing to do, to have your expert go to Washington.

MR. FLORENCE: I didn't send him there.

MR. DICKERSON: O.K., gentlemen. Mr. Florence, can I have an assurance, barring natural disaster or other unfortunate circumstances, your witnesses will be here Tuesday morning or do you want me to issue subpoenas for their appearance now?

MR. FLORENCE: I don't need subpoenas.

MR. DICKERSON: O.K. Has anybody got anything they can effectively contribute to this proceeding at this time?

MR. BLASI: Not at this moment.

MR. DICKERSON: Mr. Florence, I would hope that this hearing can be concluded no later than Wednesday afternoon.

MR. FLORENCE: The direct testimony should not take a whole day.

MR. DICKERSON: O.K.

MR. VAZZANA: That's your entire direct, is that correct?

MR. FLORENCE: That's correct. I don't speak for cross-examination obviously.

MR. DICKERSON: And nobody can judge cross-examination ahead of time. This hearing stands adjourned until 10 o'clock Tuesday morning, October 9th, in this quarters.

(Whereupon, at 11:20 A.M. the hearing was adjourned to reconvene on Tuesday, October 9th, 1973, at 10:00 A.M.)



I N D E X

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E X H I B I T S

	<u>For Id.</u>
Ex. No. 40 - 15 photographs	1196
Ex. No. 41 - Civil Docket, Town of Somers, page 273	1198
Ex. No. 42 - Civil Docket, Town of Somers, page 274	1198
Ex. No. 43 - Civil Docket, Town of Somers, page 279	1198